

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

KENNETH MILLS,

Plaintiff,

No. CIV S-05-0218 DFL KJM P

vs.

COUNTY OF SAN JOAQUIN, et al.,

Defendants.

ORDER

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Plaintiff, a county jail inmate proceeding pro se, has filed a civil rights action under 42 U.S.C. § 1983 together with a request for leave to proceed in forma pauperis under 28 U.S.C. § 1915.

On April 7, 2005, the court issued findings and recommendations, recommending the action be dismissed because petitioner had not supported his request to proceed in forma pauperis with a certified copy of his institutional trust account statement.

On May 20, 2005, plaintiff filed objections to the findings and recommendations and a new request to proceed in forma pauperis, using a Northern District of California form.

Plaintiff has not provided a certificate of the amount of funds available to him, completed by plaintiff's institution of incarceration. Also, plaintiff has not filed a certified copy of his institutional trust account statement for the six month period immediately preceding the

1 filing of the complaint. See 28 U.S.C. § 1915(a)(2). Plaintiff will be provided another
2 opportunity to submit a completed in forma pauperis application and a certified copy in support
3 of his application.

4 Plaintiff complains that he was a patient at a state hospital, not a prisoner, and
5 suggests he should not be required to comply with the requirements for an in forma pauperis
6 application submitted by a prisoner. Plaintiff was sent to a state hospital because his competence
7 to stand trial was in question, according to his own pleading. The state hospital referral is not a
8 civil commitment, but a special form of pretrial detention related to the underlying criminal
9 proceedings. People v. Waterman, 42 Cal.3d 565, 569 (1986). Accordingly, plaintiff must
10 comply with the requirements of 28 U.S.C. § 1915 (a)(2).

11 In accordance with the above, IT IS HEREBY ORDERED that:

12 1. The findings and recommendations of April 7, 2005 are hereby vacated.

13 2. Plaintiff shall submit, within thirty days from the date of this order, a
14 completed affidavit in support of his request to proceed in forma pauperis on the form provided
15 by the Clerk of Court;

16 3. The Clerk of the Court is directed to send plaintiff a new Application to
17 Proceed In Forma Pauperis By a Prisoner; and

18 4. Plaintiff shall submit, within thirty days from the date of this order, a certified
19 copy of his prison trust account statement for the six month period immediately preceding the
20 filing of the complaint. Plaintiff's failure to comply with this order will result in a
21 recommendation that this action be dismissed without prejudice.

22 DATED: May 25, 2005.

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25 UNITED STATES MAGISTRATE JUDGE
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